

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

MARZETTI FROZEN PASTA, INC.¹

Employer

and

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 431

Petitioner

Case 18-RC-17691

DECISION AND DIRECTION OF ELECTION

As described in more detail below, the Employer produces precooked and uncooked pasta products. Petitioner seeks to represent a unit of all full-time and regular part-time production and maintenance employees and warehouse employees employed by the Employer at its Altoona, Iowa facility. While the Employer contests the appropriateness of the unit, both Petitioner and the Employer agree that the unit should exclude temporary employees, casual employees, office clerical employees, confidential employees, professional employees, sales persons, managers, guards and supervisors as defined in the Act.

There are four issues in dispute between the parties. First, contrary to Petitioner, the Employer contends that the only appropriate unit must also include production, maintenance and warehouse employees employed by the Employer at its facility

¹ The Employer's name appears as amended at the hearing.

located in Clive, Iowa, and at its Iowa cold storage (ICS) facility. Second, contrary to the Employer, Petitioner contends that nine (or six, according to the Employer) supervisor helpers are supervisors within the meaning of Section 2(11) of the Act, and therefore should be excluded from the unit. Also, contrary to the Employer, Petitioner seeks to exclude from the unit six quality assurance employees. Finally, contrary to the Employer, Petitioner seeks to exclude from the unit weekend sanitation employees.

Based on the record and relevant Board law, I reject the Employer's position that the unit must include employees at its Clive and ICS operations. However, I also reject Petitioner's position that supervisor helpers, quality assurance employees, and weekend sanitation employees should be excluded from the unit.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²
3. The labor organization involved claims to represent certain employees of the Employer.

² The Employer, Marzetti Frozen Pasta, Inc., is an Iowa corporation engaged in the manufacture and production of food products. During the past calendar year, a representative period, the Employer purchased and received at its Altoona and Clive, Iowa facilities, or at just its Altoona, Iowa facility, goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Iowa. During the same period of time, the Employer sold goods and services valued in excess of \$50,000 directly to customers located outside the State of Iowa.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. There is no collective-bargaining agreement covering any of the employees in the unit sought in the petition, and the parties do not contend that there is a contract bar to this proceeding.

In this decision, I first provide an overview of the Employer's facilities and operation and of the managerial and supervisory hierarchy. Next, I describe in detail the Employer's operation in Altoona, including subsections devoted to sanitation employees, quality assurance employees and supervisor helpers. Third, I describe in detail the Employer's operation in Clive. The fourth section is a description of the Employer's ICS facility. Fifth, I summarize the working conditions and the role of shift supervisors at the three facilities, as well as employee interchange among the three facilities. Finally, I analyze Board law and apply it to this case for each issue in dispute between the parties.

Overview of the Employer's Facilities, Operation and Supervisory Hierarchy

The Employer operates three facilities in the greater metropolitan Des Moines, Iowa area. One facility is in Altoona, Iowa. Another facility is in Clive, Iowa. The Altoona and Clive facilities are 16.6 miles from one another. The third is the Iowa cold storage facility (ICS). The ICS is 2.3 miles from the Altoona facility and 18.1 miles from the Clive facility. Assuming that all three facilities are appropriately in one unit, the bargaining unit would consist of 220 employees. Forty-three of those 220 employees are employed at Clive, and eight of those 220 employees are employed at ICS.

The Employer produces precooked and uncooked pasta products at both its Altoona and Clive facilities. About 30 percent of the product is produced for grocery stores, which then sell the product to customers. Another 30 percent is produced for chain accounts and institutional customers. Examples of chain accounts are Pizza Hut and Applebee's restaurants. Other institutional customers include hospitals, schools, small restaurant chains and small restaurants. Finally, about 40 percent of the Employer's product is sold to companies that use the pasta to produce another finished product—for example, soups or frozen entrees that have pasta in them.

The biggest difference between the Altoona and Clive operations is that the Altoona facility cooks product, rinses and cools it, and then freezes and boxes it. On the other hand, the Clive facility merely mixes raw products into pasta. It does not cook the pasta, but instead runs the product directly to the freezer. In addition, the Altoona operation does not bag product, but instead only boxes product. Therefore, any product made in Altoona that requires bagging must be sent to the Clive facility. The Altoona facility includes production lines, warehouse storage and office areas, and occupies about 100,000 square feet. The Clive facility includes production areas, warehouse storage and dock space totaling about 30,000 square feet. Finally, ICS (which is leased space) consists of 30,000 square feet occupying around one-fourth of a building.

For the year 2009, the Employer produced 61,600,000 pounds of product at Altoona. About 25 million pounds of that product was shipped directly to Employer customers. This product is hauled by firms contracted by either the Employer or its customers. Another 14 million pounds of the 61,600,000 pounds of product was trucked from Altoona directly to ICS. Finally, about 22 million pounds of the pasta produced in

Altoona in 2009 went to Clive for further packaging and finishing. One example of product that is processed in both Altoona and Clive is pasta salad kits. The pasta is precooked in Altoona and then shipped to Clive for assembly into kits, which include sauce, a vegetable, and the pasta.

For the year 2009, the Employer produced 33,600,000 pounds of product in Clive. About 65 percent of that 33,600,000 pounds (around 22 million pounds) included product that originated in Altoona. All product produced in Clive is then trucked to ICS. Thus, ICS was the Employer's distribution point for about 49 million pounds of product in 2009. The Employer also sells some product that it does not manufacture. Product that the Employer does not manufacture is mostly comprised of cheese-filled product, which constitutes 1.5 million pounds of product (presumably each year) and is delivered directly to ICS.

The Employer's vice president and general manager is Michael Warren, who reports to a vice president at the parent company, T. Marzetti Company. Michael Warren's office is located at the Altoona facility. Operations Manager Terry Warren reports to Michael Warren, is responsible for the Clive and Altoona operations, and also has an office in Altoona. Reporting to Terry Warren are Roland Kern, production manager for Altoona, and Bud Chiles, production manager for Clive. Kern and Chiles have the same responsibilities—Kern at Altoona and Chiles at Clive. Gwen Harvey is the quality assurance and quality control manager for all three facilities. Her office is located in Altoona, and she reports to Vice President and General Manager Michael Warren. Tim Berryhill is sanitation manager; has an office in Altoona; and is responsible for sanitation at all three facilities, although as noted below there is a

sanitation supervisor at the Clive facility. Finally, John May supervises the eight employees employed at ICS. May reports to Clive Production Manager Chiles.

The Altoona Operation

The Altoona facility operates 24 hours per day, five days per week, with Saturday work when customer orders warrant it. The Employer operates three shifts at Altoona.

The Altoona facility has six product lines. They are spaetzle dumplings and egg noodles (line 1); lasagna – flat strips (line 2); extruded lasagna noodles (these have corrugated edges), as well as flat strips (line 3); “long goods,” which includes packaging on the line (line 4); and pasta that is short or has twists (lines 5 and 6). All six production lines operate about 40 to 50 percent of the time. Otherwise, generally three to four lines operate at the same time. From the production lines, the pasta goes to packaging; after packaging, the packaging employees transport the product to the warehouse. Then the warehouse employees get the product into the Altoona freezer. The warehouse employees employed at Altoona then load product on trailers for delivery to customers, to ICS or to Clive. There are 49 line operators, 54 packaging employees, and 13 warehouse employees in Altoona. These employees work all three shifts.

In addition to operators and packaging and warehouse employees, the Employer employs maintenance employees who perform preventive maintenance on all equipment; repair equipment that breaks down; keep equipment calibrated; and keep the lines running. There are two maintenance employees on each shift.

Each shift at the Altoona facility has its own supervisor and assistant supervisor. The Employer and Union appear to agree that both the shift supervisors and assistant

shift supervisors are 2(11) supervisors, and therefore excluded from the bargaining unit. Warehouse employees are separately supervised by Brian Engle, who apparently is responsible for all three shifts. Engle has an assistant warehouse supervisor, Dave Zvokel. Zvokel, like Engle, works during the day, Monday through Friday. Similarly, Maintenance Supervisor John Miller is apparently responsible for all three shifts of maintenance employees. Miller also has an assistant, Mike Morrill. The Employer and Union appear to agree that Engle and Miller should be excluded from the bargaining unit as 2(11) supervisors.

All packaging, production and warehouse employees attend a pre-shift meeting that is 15 to 20 minutes in length. Also attending these pre-shift meetings is one employee from the maintenance area, as well as sanitation employees (further described below) and at least one of the two quality assurance employees employed on each shift (also further described below). The purpose of the pre-shift meetings is for the maintenance employee to give feedback to production employees on equipment problems and for supervisors to perform “placements”—that is, to assign employees to jobs. According to the Employer, because it emphasizes cross-training, it moves employees among different jobs. While the record is not clear, I assume that it does not move employees from packaging to production or from the warehouse to production, but rather that movement is limited to within departments.

Sanitation Employees Employed at the Altoona Facility

The Employer employs about 32 sanitation employees at Altoona. Sanitation employees who are considered full-time work Monday through Friday on the three shifts. Sanitation employees are considered part-time if they work only on Saturdays

and Sundays. About 20 of the 32 sanitation employees work Saturdays and Sundays. According to the Employer, the weekend sanitation employees work about six hours on Saturdays and eight to ten hours on Sundays. They are scheduled to work every weekend. They report to a lead person. The weekend sanitation employees are hourly paid, but they do not receive any benefits. The reason weekend sanitation employees do not receive benefits, according to the Employer, is because they work less than the 30 hours per week required to receive benefits. This is in contrast to the full-time sanitation employees, who are eligible for benefits. Most weekend sanitation employees have jobs at other employers. Until recently, with some regularity, Altoona production employees would also work on the weekend sanitation crew.

The job of the sanitation employees is to keep equipment and the physical space clean. During the week, this means that when a line is down the sanitation employees (with help from production employees) drain tanks, rinse, and get all solids out of or off of equipment; scrub equipment with soap, water and at times Brillo pads; rinse again; sanitize; and, finally, perhaps wash off the sanitizer. All of this must be done quickly in order to bring the line back up for production. In addition, sanitation employees working Monday through Friday clean parts of production lines, which apparently does not require the line to go down. The weekend sanitation employees perform the same functions. However, the lines may not be running, and therefore there is not the urgency to get the lines back up. However, on Saturdays a production line (or more than one) may operate.

The weekend sanitation crew is supervised by Pedro Enamorado. His title is weekend helper. He works in the Altoona warehouse during the week. He assigns

work to weekend crew members after consulting with Sanitation Manager Berryhill, and he can send the crew home early when the job is done.

There is no comparable weekend sanitation crew employed at the Clive facility.

Quality Assurance Employees Employed at the Altoona Facility

The Employer employs nine individuals in quality assurance, located at Altoona, and contends that six of them belong in the unit. It would exclude from the unit Quality Assurance Manager Gwen Harvey; Harvey's assistant, Mike Acevedo; and Coordinator Cindy Cockerham. According to the Employer, Cockerham directly supervises the Altoona quality assurance employees. Presumably, the Union would agree to these exclusions, as it opposes inclusion of all quality assurance employees.

The quality assurance employees wear white lab coats, which distinguish them from other production and maintenance employees. Two quality assurance employees work on each shift. They check lines to ensure that proper cooking temperatures are being used, that the moisture levels are correct, and that the pasta is cut the correct length and width and has the correct weight. These functions involve working closely with the line operators. The quality assurance employees also ensure that the correct labels are on products, which is a function of the packaging department. In performing these functions, one or both quality assurance employees on each shift conduct four rounds per shift. Thus, a round is conducted every two hours. On rounds the quality assurance employees start at the beginning of the production process and check each stage of the process. As they check, they also obtain product samples, which they take back to the lab for weighing and measuring. In addition, on a daily basis the quality assurance employees prepare samples to be sent to the micro lab at the Clive facility

(Altoona does not have a micro lab). The samples sent to Clive are checked for total bacteria count, E coli, and pathogens. Samples of both raw materials and finished product are sent to Clive for testing by the micro lab. In addition, the Employer contracts out some testing functions of samples.

Two of the six quality assurance employees are salaried. They are employees who have been employed less than one year and who have degrees (not otherwise explained on the record). The two have more responsibility for food safety issues and for documentation. The Employer states that when it hires new quality assurance employees, it prefers that they have degrees. The four more senior quality assurance employees do not, however, have degrees. The two salaried quality assurance employees also perform rounds.

The four hourly quality assurance employees have the same benefits as other production and maintenance employees (these benefits are described in more detail below). However, the two salaried quality assurance employees employed at Altoona (as well as the two employed at Clive—described below) receive benefits comparable to those given to supervisory employees (these benefits are also described in more detail below). The salaried quality assurance employees are paid \$36,000-\$38,000 annually. The hourly pay for the four other quality assurance employees is \$15.10/hour to \$16.70/hour. This compares to line operator pay, which runs from \$10.50/hour to \$19.50/hour, and maintenance employee pay, which is \$17.35/hour to \$27.00/hour.

Supervisor Helpers Employed at Altoona

The supervisor helper classification appears to exist only at the Altoona facility, although the record indicates that leads are employed at the Clive facility. The record

fails to make clear whether supervisor helpers employed in Altoona and leads employed in Clive have similar duties.

There are two supervisor helpers on each shift at the Altoona facility. According to the testimony of Vice President and General Manager Michael Warren and two unit employees who testified, supervisor helpers substitute for employees going on breaks (the Employer does not shut down operations for any breaks) or assign other employees to substitute for employees going on breaks, assist operators in getting lines fixed, retrieve boxes or labels needed by production or packaging employees, and otherwise ensure production lines are running smoothly. Supervisor helpers also conduct the pre-shift meetings in the absence of both the shift supervisor and the assistant shift supervisor—although the record does not establish how frequently supervisor helpers conduct these meetings. The Employer contends that the supervisor helpers are also “conduits,” passing along information to production employees when it is necessary to change products. Supervisor helpers are paid 75 cents per hour more for these responsibilities.

Supervisor helpers are hourly paid and receive overtime pay. Shift supervisors and assistant shift supervisors are salaried and do not receive overtime pay. Supervisor helpers are covered by the same handbook and health, life and disability insurance as production employees. Shift supervisors and assistant shift supervisors are covered by a separate handbook for supervisory employees, have different disability insurance and better health and life insurance. Supervisor helpers are eligible for the attendance bonus available to production and maintenance employees. Shift supervisors and assistant shift supervisors are not.

The Clive Operation

Clive is primarily a bagging operation; that is, employees bag product—both product sent from Altoona and product made at Clive. Any product manufactured in Altoona that requires bagging goes to Clive. However, the Clive facility does have two production lines. One line produces uncooked noodle products (sheeted or extruded), while the other makes pastry dough. Pastry dough is more tender and requires extra attention. The packaging operation for pastry dough is separate from the packaging operation for uncooked noodle products.

Clive operates two shifts for production; the third shift is for cleaning. Sanitation employees at the Clive facility do not typically clean while the production shifts are operating. Rather, the sanitation employees do “deep cleaning” on the shift where no production is occurring. There are three operators for each production shift—one for the line for uncooked noodle products and two for the line for pastry dough. In addition, Clive employs packaging employees and seven sanitation employees. The sanitation employees perform the same functions that sanitation employees at Altoona perform, but on different equipment. The Clive sanitation crew has its own supervisor. The Clive facility also employs five maintenance employees, who report to supervisor Mike Brown, who is located in Clive.

Also employed at Clive are two salaried non-exempt quality assurance employees. According to the Employer, they perform line checks at the Clive facility, and otherwise perform the exact same work as the quality assurance employees located at the Altoona facility. While not stated on the record, presumably these two employees also perform tests in the micro lab on behalf of both the Altoona and Clive

plants. The Clive quality assurance employees report to Quality Assurance Manager Gwen Harvey.

The Clive facility has a loading dock with three dock doors, although the Employer uses only two of them. Product from Altoona comes to the dock, goes into the freezer until ready to be bagged, is bagged, and then is returned to the freezer until it is shipped out.

There are two shift supervisors employed at Clive, as well as line helpers who assist the supervisors by conveying information to the lines, by substituting for employees for breaks, and by keeping the lines functioning and efficient.

Nothing produced at the Clive facility is shipped to the Altoona facility for further processing. Moreover, the pasta and dough made at the Clive facility cannot be produced at the Altoona facility, and the pasta produced at the Altoona facility cannot be produced at the Clive facility, because special equipment is needed that is unique to each facility.

The Operation of Iowa Cold Storage (ICS)

ICS receives product that has been manufactured at the Altoona and Clive facilities. Warehouse employees in ICS unload the trucks that bring the product from Altoona or Clive, maintain the inventory, coordinate and pick orders for customers, load trailers for deliveries of product to customers, and prepare paperwork for the deliveries to customers. ICS employees work from 6:30 a.m. to 6:00 p.m., Monday through Friday. They work varying shifts in order to cover during these times. ICS employees do not generally work weekends, although they will work Saturdays if not all product gets loaded onto trailers during the week.

Besides warehouse employees, ICS employs two full-time truck drivers and one warehouse employee who is also a backup truck driver. The truck drivers are basically shuttle drivers—they pick up product in Altoona or Clive, drive it to ICS, and drop the product off at ICS. The truck drivers have commercial drivers' licenses.

Vice President and General Manager Michael Warren testified that the truck drivers have regular interaction with warehouse personnel located in Altoona, Clive and at ICS itself. However, he offered little in the way of specific examples of actual interaction. For example, he noted that the truck drivers are involved in the electronic movement of paper. It appears that Altoona and Clive warehouse employees electronically move responsibility for product to the truck drivers when the drivers leave with product, and the truck drivers electronically move responsibility for the product to ICS warehouse employees upon delivery to ICS. However, there is no evidence this involves personal rather than electronic interaction. While Warren also testified that truck drivers engage in personal interaction with employees at the dock, on the other hand, he also testified that product is already loaded on the trailer and ready to be taken when the driver arrives; and that once the product is released, the driver often drives to ICS and merely drops the trailer off. Thus, again there is no specific evidence of how the truck drivers employed at ICS interact with the Altoona or Clive warehouse employees. In fact, the only specific testimony regarding interaction is that the ICS truck drivers are expected to assist with loading trailers or trucks at the ICS facility, and therefore regularly interact with ICS warehouse employees.

The Employer points out that the warehouse employees at ICS engage in the same work as warehouse employees at Altoona and Clive. That is, the warehouse

employees at Altoona and Clive receive and unload raw product used in the manufacture of pasta, and then they load trailers for delivery to customers or to ICS.

The Employer does not employ truck drivers for the delivery of product directly to customers. Rather, the Employer contracts with Ruan to deliver product directly to customers from the ICS. The Employer contracts with other carriers, or customers contract with carriers, for product delivered directly from Altoona to customers.

**Comparison of Wages, Benefits and Other Working Conditions,
the Role of Shift Supervisors at the Three Facilities,
and Employee Interchange Among the Facilities**

Wages, Benefits and Other Working Conditions

Except for the four salaried quality assurance employees (two employed at Altoona and two employed at Clive) and the weekend sanitation employees employed at Altoona, employees either in the unit sought by Petitioner or in the unit sought by the Employer enjoy the same benefits—including health, disability and life insurance, vacation, overtime pay, 401(k) plan, and holidays. They use the same electronic time keeping system, they have the same paydays, they are paid from the same Employer bank account, and they have the same employee handbook. There is one human resources office, located in Altoona, for all three facilities.

In addition, job descriptions are the same for the three facilities. That is, warehouse employees employed at Altoona, Clive and ICS have the same job description, as do line operators, packaging employees, maintenance and other employee classifications that exist at both Clive and Altoona. The Employer also contends that all policies are the same, although the record reveals a few differences. For example, certain tests that result in extra hourly pay are administered in Altoona but

are not available to employees in Clive or at ICS. These include safety and sanitation tests, as well as line operation tests. Altoona employees who pass the safety or sanitation tests receive an extra 35 cents per hour for each test passed, and an extra 20-40 cents per hour for passing line operation tests. In addition, starting wage rates for at least some employees are higher at the Clive facility (and there is no record evidence suggesting starting wages are the same for any common classification when comparing Altoona, Clive and ICS). In addition, while the Employer contends that wage increases are decided at a corporate level and are the same for all employees, in fact, what occurs is that corporate decides on an overall annual increase of some percentage. Then some of that percentage increase (10-15 cents per hour) is awarded to employees based on merit. Which employees get merit pay and the amount given to each employee is determined by the shift supervisors (or at ICS by Mike Brown), with review by each facility's production manager (or at ICS by Chiles), then Human Resources, then Vice President and General Manager Michael Warren, and finally the corporate office.

All personnel files for employees at all three facilities are maintained in Altoona.

The Role of Shift Supervisors

The Employer's human resources manager, Steven Bowers, testified in detail regarding the Employer's hiring and discipline policies.

The Employer never hires from "off the street" for most jobs. Rather, it employs temporary employees, and if there are openings for a permanent position, then it selects from among the temporary employees. The shift supervisor for each shift at each facility makes this selection. There are two exceptions to this general policy regarding

hiring. One exception is the weekend sanitation crew. They are hired “off the street” by Sanitation Manager Berryhill. However, the weekend sanitation employees are not eligible to be hired as full-time employees during the week. The second exception is maintenance employees. For Clive, the maintenance supervisor located at Clive and the production manager located at Clive hire for maintenance openings.

Shift supervisors are authorized to issue documented verbal warnings and written warnings with no involvement by higher levels of management. However, second written warnings (which result in one-day suspensions) and discharge decisions, while made by shift supervisors, must be cleared with Human Resources. The maintenance supervisors in Clive and Altoona and supervisor John May at ICS have the same authority as shift supervisors.

Interchange

There is virtually no interchange of employees from one of the facilities to the other two facilities. Altoona production and sanitation employees never work at Clive, and Clive production and sanitation employees never work at Altoona. There is also no evidence that quality assurance employees from Altoona work at Clive, or vice versa. The Employer presented testimony that ICS warehouse employees have worked in Altoona 10 to 12 times in the past year—but it appears this was for training purposes and not because ICS warehouse employees were substituting by working at the Altoona warehouse. There is no evidence that ICS employees have worked at Clive. There is general testimony that maintenance employees from Clive and Altoona consult one another on the telephone, but no testimony that maintenance employees from the two facilities interchange with one another.

The only testimony of permanent transfers from one facility to another is that “several years ago” an Altoona warehouse employee transferred to ICS, and a quality assurance employee transferred from one facility to the other.

Analysis

The Single-Facility Unit Sought by Petitioner Is an Appropriate Unit

The Board has long held that a petitioned-for single facility unit is presumptively appropriate, unless it has been so effectively merged or is so functionally integrated that it has lost its separate identity. See *J & L Plate, Inc.*, 310 NLRB 429 (1993). The party opposing the single-facility unit has the burden of rebutting its presumptive appropriateness. To determine whether the single-facility presumption has been rebutted, the Board examines (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. *Id.* At 429; *R & D Trucking, Inc.*, 327 NLRB 531 (1999).

In reaching the conclusion that the single-facility Altoona unit is appropriate, I rely on *Hilander Foods*, 348 NLRB 1200 (2006). As in the *Hilander* case, in this matter, while all employees are subject to mostly the same personnel policies, employee handbook, wage and benefit programs, the Altoona and Clive facilities have three levels of supervision (production manager, shift supervisors and assistant shift supervisors) and ICS has two levels of supervision (Clive production manager and ICS supervisor) that are distinct from one another. More importantly, shift supervisors can discipline, recommend hiring, evaluate employees, and recommend merit wage increases, assign

work, and otherwise manage their shifts. I recognize that the Employer's Human Resources area is involved in reviewing suspensions, discharges, and merit increases, but there is not a single example of central office involvement in either the decision-making process utilized by shift supervisors, or in refusing to abide by the recommendation of shift supervisors. As noted in *Hilander*, "centralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. Instead, the Board puts emphasis on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems." *Id.* at 203 (citations omitted).

I also note that there are differences in terms and conditions of employment. Up to \$1.10 in incentive pay is available to Altoona employees (for passing tests) that is not available to Clive and ICS employees. Starting wages differ at Altoona when compared to Clive. Finally, Altoona is an around-the-clock operation five days per week, with deep cleaning occurring on weekends. Generally, neither Clive nor ICS operates on weekends.

I recognize that the Clive and Altoona quality assurance employees are commonly supervised. However, this totals only six employees sharing common supervision out of roughly 220 employees at the three facilities.

Also, as in the *Hilander* case, although the employees at the Employer's three facilities have essentially the same skills and functions, there is no evidence of interchange. Clive employees do not work at ICS or Altoona. Altoona employees do

not work at ICS or Clive. Finally, ICS employees do not work at Altoona or Clive. There is not a single instance of interchange not involving training. Moreover, there is virtually no evidence of temporary transfers among the three facilities, and only two permanent transfers that occurred “years ago.” Moreover, while the Altoona and Clive production and packaging employees have similar skills and functions, they operate different equipment, and both the products they manufacture and the bagging performed at Clive cannot be performed at the other facility. Besides no interchange, there is minimal evidence of contact by Altoona employees with employees of Clive and ICS. The evidence regarding ICS truck driver interaction consists of conclusionary statements that are not supported by what little specific testimony there is on the subject. The only clearly described contact in the record is telephone conversations between Clive maintenance employees and Altoona maintenance employees.

A difference between *Hilander* and the instant case is the degree of functional integration. In 2009, slightly over one-third of the product manufactured in Altoona went to Clive for further processing and for packaging, an additional 20 percent of the product manufactured in Altoona went to ICS for storage, and all of the product manufactured at Clive went to ICS for storage. However, no product manufactured at Clive goes to Altoona for further processing. While this is evidence of significant functional integration, this functional integration does not result in inter-facility employee interchange or employee contact. Cf. *We Care Transportation, LLC*, 353 NLRB No. 9 (2008); *Budget Rent A Car Systems*, 337 NLRB 884 (2002).

In reaching my conclusion that the single-facility unit is appropriate, I have carefully considered cases cited by the Employer, all of which focus on the high degree

of functional integration between facilities. However, in each of those cases, additional facts supported a conclusion that the single-facility presumption had been rebutted. Such facts are not present in this case. Thus, in *Prince Telecom*, 347 NLRB 789 (2006), the Board relied not only on functional integration, but also on the fact that the area manager retained control over interviewing and hiring applicants and suspension and termination decisions, and the fact that there was evidence of permanent and temporary transfers. In the instant case, shift supervisors and production managers at each facility retain significant control over hiring and discipline decisions, and while the Employer claimed that the HR office was involved in decisions to suspend or terminate employees, the precise role of the HR office was not explained. There is no evidence that the HR office has ever overturned a shift supervisor or production manager's decision to suspend or terminate an employee. Moreover, in the instant case, the evidence of permanent or temporary transfers is very limited. In *Budget Rent A Car Systems*, 337 NLRB 884 (2002), key factors cited by the Board, and not present in the instant case, were the lack of separate local management and significant contact among employees at the various facilities in question. In *Neodata Product Distribution*, 312 NLRB 987 (1993), the degree of functional integration was greater than in the instant case, and the Board noted evidence of frequent personal and telephone contact between employees at the two facilities; evidence of transfers between the two facilities; and limits on local management control of each facility. None of these factors is present in the instant case.

The Supervisor Helpers Are Not 2(11) Supervisors

The Board requires that the party alleging that an individual is a supervisor has the burden of proof. *NLRB v. Kentucky River Community Care*, 121 S.Ct. 1861, 1866-1867 (2001). Any lack of evidence in the record is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 fn. 8 (1999). The Board has also long recognized that purely conclusionary evidence is not sufficient to establish supervisory status. *Volair Contractors*, 341 NLRB 673, 675 (2004); *Sears, Roebuck & Co.*, 304 NLRB 193, 194 (1991).

Petitioner's evidence regarding the 2(11) status of the supervisory helpers falls far short of meeting its burden. There is no evidence that supervisory helpers exercise any of the indicia of supervisory status set out in Section 2(11) of the Act. While Petitioner contends that supervisory helpers substitute at pre-shift meetings, and therefore assign work, there is no record evidence regarding the frequency of the substitution and, more importantly, no evidence that the assignment of work requires independent judgment. In its post-hearing brief, Petitioner also points to a single "positive action form" (akin to a warning) signed in the "Supervisor's Signature" blank by Wayne Huss, whom Petitioner contends is a supervisor helper. However, there is no record testimony on the circumstances leading to the issuance of this warning, and the warning is also signed by manager Roland Kern, as having reviewed it. It is impossible to know based on this record the significance of receiving a "positive action form" or the precise role of Huss or Kern in the investigation prior to issuance of the warning, or who made the final decision to issue it.

Quality Assurance Employees Share Sufficient Community of Interest to Appropriately Be Included in the Unit

Contrary to Petitioner, I conclude that the six quality assurance (or control) employees share a community of interest with the Employer's production and maintenance employees and are appropriately included in the unit.

This case is virtually indistinguishable from *Keller Crescent Co.*, 326 NLRB 1158 (1998). That is, in the instant case, the quality assurance employees work the same shifts as production and maintenance employees, two on each shift; the quality assurance employees monitor product to ensure it meets Employer specifications and quality; the quality assurance employees spend a great deal of time on the production floor observing the production process and taking samples (four rounds per shift compared to two audits per shift in *Keller Crescent*); quality assurance employees take samples from the production process; and the quality assurance employees discuss problems directly with production employees or their supervisors. Thus, quality assurance employees have daily contact with production employees; work alongside the production employees; attend pre-shift meetings with production, maintenance and sanitation employees; and perform work that is functionally integrated with the production process.

Four of the six quality assurance employees are hourly paid and have the same benefits as other unit employees. Moreover, their hourly wage rate is less than the hourly wage rate of a number of other unit employees. While the quality assurance employees are separately supervised from the production, packaging, and warehouse

employees, so are the maintenance employees; and yet Petitioner wishes to include maintenance employees in the unit.

I note that two of the quality assurance employees employed at Altoona are salaried and that they receive the same benefits as salaried supervisors—and not as production employees. However, these facts are not sufficient to warrant a conclusion that the quality assurance employees should be excluded from the unit. First, some production and a number of maintenance employees earn more on an hourly basis than the salaried quality assurance employees do if their salaries are divided by 2080 hours per year. Second, there is no evidence suggesting that the salaried quality assurance employees have significantly different job duties than the hourly quality assurance employees.³ *K.G. Knitting Mills*, 320 NLRB 374 (1995), (facts that some employees who perform unit work receive a salary, do not punch a time clock, and receive different health insurance benefits from other unit employees are not reasons to exclude them from a unit of production employees).

Weekend Sanitation Employees Are Not Casual Employees and Share a Sufficient Community of Interest to Be Included in the Unit

There is no record evidence supporting Petitioner's position that weekend sanitation employees are casual employees. On the contrary, they are scheduled to work 14 to 16 hours each weekend, and there is no evidence contradicting Employer testimony that the weekend sanitation employees work every weekend. Moreover, they perform the same work as weekday sanitation employees whom Petitioner includes in the unit. They are separately supervised with regard to day-to-day work, but I note that

³ No party suggested that the salaried quality assurance employees are professional employees.

Sanitation Manager Berryhill hires them, and Berryhill is ultimately responsible for the Employer's entire sanitation operation, including during the week. Thus, I conclude that weekend sanitation employees work regularly and sufficient hours to be considered regular part-time employees. The fact that they do not receive benefits because of their part-time status is not a basis for excluding them from the unit. *S.S Joachim & Anne Residence*, 314 NLRB 1191 (1994) (fact that on-call employees do not receive the same benefits as other unit employees is not determinative of unit status; rather the Board considers "the similarity of the work performed and the regularity and continuity of employment."); *Trump Taj Mahal Casino*, 306 NLRB 294 (1992) (casuals included in unit if they perform unit work and have regularity of employment). Thus, I reject Petitioner's position that the weekend sanitation employees are casual employees, and therefore it is unnecessary to determine an eligibility formula.

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production, maintenance and warehouse employees employed by the Employer at its 803 8th Street, Altoona, Iowa facility, including supervisor helpers, quality assurance employees and weekend sanitation employees; excluding temporary employees, casual/temporary employees, office clerical employees, confidential employees, professionals, sales persons, managers, guards and supervisors as defined in the Act, as amended.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of

Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, and who meet the eligibility formula set forth above. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁴

⁴ To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, 330 South Second Avenue, Suite 790, Minneapolis, MN 55401-2221, on or before close of business **April 8, 2010**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **United Food and Commercial Workers Union, Local 431.**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 – 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by 5:00 p.m. (EDT) on April 15, 2010.** The request may be filed through E-Gov on the Board's website, www.nlr.gov,⁵ but may not be filed by facsimile.

Signed at Minneapolis, Minnesota, this 1st day of April, 2010.

/s/ Marlin O. Osthus

Marlin O. Osthus, Regional Director
Region Eighteen
National Labor Relations Board
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221

⁵ To file a request for review electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-filing link on the menu. When the E-file page opens, go to the heading Board/Office of the Executive Secretary and click the "File Documents" button under that heading. A page then appears describing the E-filing terms. At the bottom of the page, check the box next to the statement indicating that the user has read and accepts the E-File terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's original correspondence in this matter and is also located under "E-Gov" on the Board's website, www.nlr.gov.